UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,733	09/26/2003	Julien Lefebvre	051173-5004-US	6762

9629 7590 11/15/2006

MORGAN LEWIS & BOCKIUS LLP
1111 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20004

EXAMINER	
HON, SOW FUN	

ART UNIT	PAPER NUMBER
1772	

DATE MAILED: 11/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/670,733	LEFEBVRE ET AL.	
	Examiner	Art Unit	
	Sow-Fun Hon	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 August 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26,29-32 and 35* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-25,29-32 and 35* is/are rejected.

7)☒ Claim(s) *26* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/31/06 has been entered.

Response to Amendment

Withdrawn Rejections

2. The 35 U.S.C. 103(a) rejections of claims 1-26, 29-32 and 34 over Mandzu in view of Altshuler and Lefebvre, as the primary combination of references, are withdrawn due to Applicant's amendment dated 08/31/06.

New Rejections

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-3, 20-22, 35 are rejected under 35 U.S.C. 102(e) as being anticipated by Gozukara (US 6,579,607), as evidenced by Miyashita (US 5,236,483).

Regarding claims 1, 20-22, 35, Gozukara teaches a film comprising at least one layer and having a total thickness of 1.2 mil (30 microns, column 6, lines 28-32), which is within the claimed range of from about 1 mil to about 15 mil, wherein at least one layer of said film comprises 2 % by weight of particles (column 6, lines 30-31), which is within the claimed range of about 0.1 to about 10% by weight, wherein the particles have a particle size in the range of 53 to 61 microns (column 6, lines 31-33), which is within the claimed range of between 50 and 500 microns, 60 and 250 microns, or 60 and 180 microns. Gozukara teaches that the film is formed from a combination of LDPE and LLDPE (low density polyethylene and linear low density polyethylene, column 6, lines 28-30), which are disclosed in Applicant's specification as materials for the elastomeric film (2nd paragraph from the bottom of page 5), hence teaching an elastomeric film as defined by Applicant's specification. Gozukara teaches that the particles are glass (Ballotini glass spheres, column 6, lines 30-31), which has a melt temperature greater than 500° F, as evidenced by Miyashita.

Miyashita teaches that the melting point of glass is 3115 °F (1713 °C, column 4, lines 23-35), which is greater than 500 °F.

Gozukara fails to disclose that the glass particles function as an anti-skid additive.

However, Gozukara teaches that the smallest particle size is 53 microns, which is larger than the film thickness of 30 microns without the particles (intrinsic thickness, column 6, lines 31-33). Thus the glass particles protrude from the layer in the film and hence function as an anti-skid additive due to the roughness created by the protrusions.

Gozukara fails to disclose that the elastomeric film, as defined by Applicant, does not induce lensing or micro-perforation formation in the elastomeric film both during formation and use of the film.

However, Gozukara teaches the composition of Applicant's film as discussed above. Where the claimed and prior art products are identical or substantially identical in structure and composition, or are produced by identical or substantially identical processes, a prima facie case of anticipation has been established, and the claimed properties are presumed to be inherent. See MPEP 2112.01. Thus, the elastomeric film of Gozukara is expected to not induce lensing or micro-perforation formation in the elastomeric film both during formation and use of the film.

Regarding claim 2, Gozukara teaches that the film can comprise more than one layer (multilayer, column 5, lines 22-23), such as 5 layers (column 7, lines 30-45), which is within the claimed range of between 2 and 11 layers, wherein each layer makes up from 5 to 95% of the total thickness (11/34 x 100, 3.5/34 x 100, column 7, lines 30-45).

Regarding claim 3, Gozukara teaches that at least one layer comprises 100% of an ethylene-vinyl acetate (EVA) copolymer (tie layer is an anhydride modified ethylene vinyl acetate polymer, column 7, lines 15-25).

Claim Rejections - 35 USC § 103

4. Claims 7-8, 10, 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over as Gozukara, as evidenced by Miyashita, as applied to claims 1-3, 20-22, 35 above.

Gozukara, as evidenced by Miyashita, teaches the elastomeric film comprising at least one layer and having a total thickness of from about 1 mil to about 15 mil, wherein the at least one layer of said film comprises from about 0.1 to about 10% by weight of an anti-skid additive, wherein the anti-skid additive has a particle size of between 50 and 500 microns, has a melt temperature greater than 500 °F, and does not induce lensing or micro-perforation formation in the elastomeric film both during formation and use of the film, as discussed above.

Regarding claims 7-8, 10, Gozukara fails to teach that the at least one layer comprising the anti-skid additive comprises a polyolefin plastomer having a density within the range of 0.910 g/cm^3 or lower, or less than or equal to 0.910 g/cm^3, and a melt index within the range of from 0.1 to 30 g/10 minutes, and is a copolymer of ethylene and a C4-C20 alpha-olefin.

However, Gozukara teaches that Dow Plastics PF 1140 plastomer is used for a layer that directly contacts food (column 7, lines 10-14), and is a polyolefin plastomer (POP), specifically a metallocene-catalyzed copolymer (single site catalyst technology, column 7, lines 10-13), having a density within the claimed range of 0.910 g/cm^3 or lower, or less than or equal to 0.910 g/cm^3, and a melt index within the claimed range of

from 0.1 to 30 g/10 minutes, and is a copolymer of ethylene and a C4-C20 alpha-olefin, as defined by Applicant's specification (page 6, last two paragraphs).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have used the claimed POP in the at least one layer of the elastomeric film of Gozukara, in order to provide a food-contacting layer, as taught by Gozukara.

Regarding claim 24, Gozukara fails to teach that the at least one layer comprising anti-skid additive further comprises a slip agent.

However, Gozukara teaches that a slip agent is added to the inner layer (column 7, lines 40-45), for the purpose of providing slip characteristics to the film.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have added a slip agent to the at least one layer comprising anti-skid additive of the elastomeric film of Gozukara, as evidenced by Miyashita, in order to provide slip characteristics to the film, as taught by Gozukara.

5. Claims 4-6, 11-15, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over as Gozukara, as evidenced by Miyashita as applied to claims 1-3, 7-8, 10, 20-22, 24, 35 above, and further in view of Lefebvre (US 5,732,745).

Gozukara, as evidenced by Miyashita, teaches the elastomeric film comprising at least one layer and having a total thickness of from about 1 mil to about 15 mil, wherein the at least one layer of said film comprises from about 0.1 to about 10% by weight of an anti-skid additive, wherein the anti-skid additive has a particle size of between 50 and 500 microns, has a melt temperature greater than 500 °F, and does not induce

lensing or micro-perforation formation in the elastomeric film both during formation and use of the film, as discussed above. In addition, Gozukara teaches that at least one layer can comprise 100% of an ethylene-vinyl acetate (EVA) copolymer (ethylene/vinyl acetate, column 2, lines 36-38). Gozukara fails to teach that the at least one layer comprises the EVA copolymer in the amount of 10 to 95% or 25 to 85%, or that the EVA copolymer consists of pure EVA copolymer having from 2 to 45% vinyl acetate by weight, or that the elastomeric film is in the form of a tube.

Furthermore, while Gozukara teaches that the at least one layer can comprise LLDPE in the amount of 85% (linear low density polyethylene, column 6, lines 28-30), which is within the claimed range of 5 to 100%, or 10 to 95%, Gozukara fails to disclose that the LLDPE has a density of greater than 0.910 g/cm^3, or between 0.910 and 0.930 g/cm^3, that it is a pure copolymer of a C_4-C_{20} alpha-olefin, that it has a melt index between 0.1 and 30 g/10 min, or that it is combined with the EVA copolymer.

However, Lefebvre teaches an elastomeric film (elastic, column 2, lines 5-7) comprising at least one layer and having a total thickness of from about 3.6 to 4.4 mils (column 5, lines 10-15), which is within the claimed thickness of from about 1 mil to about 15 mil, and which combines high puncture resistance with an exceptional stretchability and elasticity (abstract), comprising at least one layer comprises 55 to 90% by weight of an ethylene vinyl acetate copolymer (column 2, lines 15-20), which is within the claimed range of 10 to 95% and overlaps the claimed range of 25 to 85%. Lefebvre teaches that the vinyl acetate content of the EVA copolymer is 2 to 6% (column 3, lines 44-45), which overlaps the claimed range of from 2 to 45%.

Furthermore, Lefebvre teaches that the at least one layer further comprises from 5 to 35% by weight of a copolymer of linear low density polyethylene (column 2, lines 15-20), which overlaps the claimed range of 5 to 100%, 10 to 95%, or 15 to 75%, having a density of from 0.915 to 0.925 (column 3, lines 62-65), which is within the claimed range of greater than 0.910 g/cm^3, or between 0.910 and 0.930 g/cm^3. Lefebvre teaches DOWLEX-2021, DOWLEX 2045, DOWLEX 2070, DOWLEX-2073, DOWLEX-2101, L-2007-F, L-2001-F AND L-2002-F as suitable LLDPE resins (column 3, lines 65-70 and column 4, lines 1-5), which are the same LLDPE resins used by Applicant, and hence are pure copolymers of a C_4-C_{20} alpha-olefin as defined by Applicant's specification (page 7). Lefebvre teaches that the copolymer of LLDPE has a melt index of from 0.5 to 1.6 g/10 min (dg/min, column 3, lines 64-66), which overlaps the claimed range of between 0.1 and 30 g/10 min. Lefebvre teaches that the at least one layer comprises a combination of at least two resins, EVA copolymer and LLDPE (column 2, lines 15-20). Lefebvre teaches that the film is used for the purpose of providing packaging, such as a tube (for storage, column 2, lines 21-35), which can be stretched radially without tearing or a substantial permanent deformation (column 2, lines 38-45).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have used the elastomeric resin composition of Lefebvre as the resin composition of the elastomeric film of Gozukara, as evidenced by Miyashita, in order to provide packaging, such as a tube, which combines high puncture resistance with an exceptional stretchability and elasticity, and hence can be stretched radially without tearing or a substantial permanent deformation, as taught by Lefebvre.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over as Gozukara, as evidenced by Miyashita as applied to claims 1-3, 7-8, 10, 20-22, 24, 35 above, and further in view of Erderly (US 5,451,450).

Gozukara, as evidenced by Miyashita, teaches the elastomeric film comprising at least one layer comprising a POP which is a metallocene-catalyzed copolymer, having a density with the range of 0.910 g/cm^3 or lower, and a melt index within the range of 0.1 and 30 g/10 minutes, as discussed above. Gozukara fails to teach that the POP is a Ziegler-Natta-catalyzed copolymer having a density of less than or equal to 0.910 g/cm^3 and a melt index of between 0.1 and 30 g/10 minutes.

However, Erderly teaches a POP with a density of 0.900 g/cm^3 (polyolefin plastomer, column 3, lines 30-35), which is a metallocene-catalyzed copolymer (column 4, lines 31-41) with a melt index in the range of about 0.5 to 50 g/10 min. (dg/min, column 6, line 66), which overlaps the claimed range of from 0.1 to 30 g/10 min. Erderly teaches that a Ziegler-Natta catalyst can also be used to catalyze the polymerization of the POP copolymer (column 7, lines 21), for the purpose of utilizing the physical properties provided by the Ziegler-Natta catalysis, as long as the resultant composition distribution is the same as that produced by the metallocene catalyst (column, lines 9-15). The POP is a copolymer of ethylene and a C_3 to C_{20} alpha-olefin (column 3, lines 50-55), which encompasses the claimed range of C_4 to C_{20} alpha-olefin. Erderly teaches that the POP is an elastomer (column 3, lines 30-35) suitable for improving the elasticity of thin elastic films (unload power, column 8, lines 45-55).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have used a Ziegler-Natta-catalyzed copolymer in lieu of the metallocene-catalyzed copolymer as the POP in the at least one layer of the elastomeric film of Gozukara, as evidenced by Miyashita, in order to provide the layer with the physical properties provided by the Ziegler-Natta catalysis, while improving the elasticity of the film, as taught by Erderly.

7. Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over as Gozukara, as evidenced by Miyashita as applied to claims 1-3, 7-8, 10, 20-22, 24, 35 above, and further in view of Falla (US 5,879,768).

Gozukara, as evidenced by Miyashita, teaches the elastomeric film comprising at least one layer and having a total thickness of from about 1 mil to about 15 mil, wherein the at least one layer of said film comprises from about 0.1 to about 10% by weight of an anti-skid additive, wherein the anti-skid additive has a particle size of between 50 and 500 microns, has a melt temperature greater than 500 °F, and does not induce lensing or micro-perforation formation in the elastomeric film both during formation and use of the film, as discussed above. In addition, Gozukara teaches that the at least one layer of the elastomeric film, comprises low density polyethylene (LDPE) in the amount of 15% (column 6, lines 28-32), which is within the claimed range of 5 to 100%, 10 to 95% and 15 to 75%. Gozukara fails to disclose that the LDPE has a density between 0.910 and 0.930 g/cm^3, or that it has a melt index of from 0.1 to 30 g/10 minutes.

However, Falla teaches that low density polyethylene has a density of about 0.916 to about 0.930 g/cm^3 which is within the claimed range of between 0.910 and

0.930 g/cm^3, and has a melt index of about 0.1 to about 10 g/10 min (column 8, lines 7-15), which is within the claimed range of from 0.1 to 30 g/10 minutes. Falla teaches the addition of 20 % by weight in the examples (column 12, lines 50-60), which is within the claimed range of 5 to 100 %, of 10 to 95 % and 15 to 75 %, as well as teaching 0 to 90 percent in the claims (column 21, lines 50-55). Falla teaches that LDPE has high melt strength and is added to film for the purpose of providing film packages that can be made fast and has few leaks (column 8, lines 28-35).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have used LDPE having a density between 0.910 and 0.930 g/cm^3 and a melt index within the range of from 0.1 to 30 g/10 minutes, as the LDPE in the at least one layer of the elastomeric film of Gozukara, as evidenced by Miyashita, in order to obtain film packages with high melt strength that can be made fast and has few leaks, as taught by Falla.

8. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over as Gozukara, as evidenced by Miyashita, as applied to claims 1-3, 7-8, 10, 20-22, 24, 35 above, and further in view of Karaiwa (US 6,706,385).

Gozukara, as evidenced by Miyashita, teaches the elastomeric film comprising at least one layer and having a total thickness of from about 1 mil to about 15 mil, wherein the at least one layer of said film comprises from about 0.1 to about 10% by weight of an anti-skid additive, wherein the anti-skid additive has a particle size of between 50 and 500 microns, has a melt temperature greater than 500 °F, and does not induce lensing or micro-perforation formation in the elastomeric film both during formation and

use of the film, as discussed above. Gozukara fails to teach that the anti-skid additive is an ultrahigh molecular weight polyethylene particle.

However, Karaiwa teaches an ultrahigh molecular weight polyethylene as being equivalent to glass (silica, column 6, lines 45-55), for the purpose of utilizing the physical properties of the ultrahigh molecular weight polymer, in providing a suitable particle with a diameter of 1 to 100 microns (column 6, lines 40-45), which overlaps the claimed range of between 50 and 500 microns. Ultrahigh molecular weight polyethylene has a melt temperature greater than 500 °F as defined by Applicant's specification (original claim 23).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have used ultrahigh molecular weight polyethylene particles in lieu of the glass particles in the at least one layer of the elastomeric film of Gozukara, as evidenced by Miyashita, in order to utilize the physical properties of the ultrahigh molecular weight polymer, as taught by Karaiwa.

9. Claims 25, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over as Gozukara, as evidenced by Miyashita, as applied to claims 1-3, 7-8, 10, 20-22, 24, 35 above, and further in view of Anthony (US 4,399,173).

Gozukara, as evidenced by Miyashita, teaches the elastomeric film comprising the at least one layer comprising LLDPE, as discussed above. Gozukara fails to teach that the elastomeric film consists of three layers that are an inside layer, a core layer and an outside layer, let alone that the inside layer is 20% of the total thickness and comprises 100 % LLDPE; the core layer is 60% of the total thickness and comprises

100% LLDPE; and the outside layer is 20% of the total thickness and comprises 100% LLDPE.

However, Anthony teaches a film which consists of three layers that are an inside layer, a core layer and an outside layer (column 3, lines 55-60), wherein the inside layer is about 14 % of the total thickness, the core layer is about 72 % of the total thickness and the outside layer is about 14 % of the total thickness (about 1:5:1 ratio, column 3, lines 55-60), and that an even lower ratio of thicknesses between the core layer and the outer layers are acceptable (column 3, lines 53-61), for the purpose of providing the desired end-use. Thus, it would have been obvious to one of ordinary skill in the art, to have optimized the process of forming the elastomeric film, to obtain the claimed 20 % total thickness for the inside layer, 60 % total thickness for the core layer, and 20 % total thickness for outside layer, which corresponds to a lower 1:3:1 ratio between the core layer and the outer layers, for the purpose of proving the desired end-use. Anthony teaches that the inside, core and outer layers comprises 100 % linear low density polyethylene (low pressure, column 4, lines 45-60, which is linear, column 1, lines 8-15), for the purpose of providing improved puncture toughness, tear strength and tensile strength (column 5, lines 45-55).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have optimized the process of forming the elastomeric film of Gozukara, as evidenced by Miyashita, to obtain a film consisting of three layers that are an inside layer, a core layer and an outside layer, wherein the inside layer is 20% of the total thickness and comprises 100 % LLDPE; the core layer is 60% of the

total thickness and comprises 100% LLDPE; and the outside layer is 20% of the total thickness and comprises 100% LLDPE, in order to provide improved puncture toughness, tear strength and tensile strength for the desired end-use, as taught by Anthony.

10. Claims 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gozukara, as evidenced by Miyashita, as applied to claims 1-3, 7-8, 10, 20-22, 24, 35 above, and further in view of Erickson (US 4,954,124).

Gozukara, as evidenced by Miyashita, teaches an elastomeric film comprising the at least one layer, as discussed above. In addition, Gozukara teaches that the film is used as a packaging film (column 6, lines 10-15), but fails to teach that the elastomeric film is a gusseted film, let alone a pre-folded gusseted film having a first film panel and a second opposing film panel, a closed edge and a parallel open edge extending along the length opposite the closed edge, wherein the first and the second opposing film panels are connected at the closed edge and the gusset is formed along the length of the film at the closed edge, and wherein the parallel open edge of the film corresponds to an edge of the first film panel and an edge of the second film panel and an inwardly folded lip is formed at each edge of the film panels.

However, in Fig. 8, shown on the next page, Erickson teaches a pre-folded gusseted film having a first film panel 12, and a second opposing film panel 14, a closed edge 12B and a parallel open edge 12A extending along the length opposite the closed edge 12B, wherein the first and second opposing film panels 12, 14 are connected at

the closed edge and the gusset is formed along the length of the film at the closed edge.

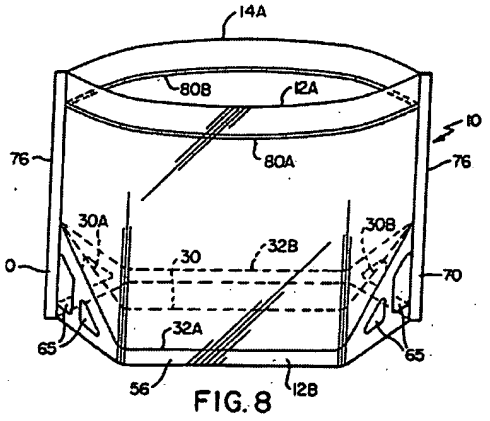

FIG. 8

In Fig. 8 of Erickson above, the parallel open edge of the film corresponds to an edge of the first film panel, 12A, and an edge of the second opposing film panel, 14A. Erickson teaches an inwardly folded lip formed at each edge of the film panels (folded inwardly, column 6, lines 54-60). Erickson teaches that the bag is capable of standing up by itself before, during and after being filled (column 1, lines 9-11).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have formed the elastomeric film of Gozukara, as evidenced by Miyashita, into a gusseted film bag, using the design of Erickson, in order to provide a packaging film bag which is capable of standing up by itself before during and after being filled, as taught by Erickson.

Allowable Subject Matter

11. Claim 26 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art of record, US 6,444,080, even in view of US 6,132,844, US 5,732,745, US 5,236,483, US 5,451,456, US 5,879,768 or US 6,706,385, fails to teach or suggest the combination of an elastomeric film, with a total thickness of from about 1 mil to about 15 mil, consisting of three layers, wherein a) the inside layer is 15% of the total thickness and comprises ethylene vinyl acetate (EVA) copolymer, having 6.5% vinyl acetate by weight, linear low density polyethylene (LLDPE) hexane copolymer, carbon black, calcium carbonate, UV stabilizer and antistatic additive; (b) the core layer is 70% of the total thickness and comprises EVA copolymer, having 6.5% vinyl acetate by weight, polyethylene copolymer of hexane produced using a Ziegler-Natta catalyst, titanium dioxide, UV stabilizer and antistatic additive; and (c) the outside layer is 15% of the total thickness and comprises EVA copolymer, having 6.5% vinyl acetate by weight, polyethylene copolymer of hexane produced using a Ziegler-Natta catalyst, titanium dioxide, UV stabilizer, fluoroelastomer and about 0.1 to about 10% by weight of an anti-skid additive which has a particle size of between 50 and 500 microns does not melt, or has a melt temperature greater than 500 °F, and does not induce lensing or micro-perforation formation in the elastomeric film both during formation and use of the film.

Response to Arguments

12. Applicant's arguments regarding the combination of Mandzu in view of Altshuler and Lefebvre, have been considered but are moot in view of the new ground(s) of rejection. However, Applicant's arguments against the new primary reference are addressed below, in order to advance prosecution.

13. Applicant argues regarding Gozukara, that the effect of the surface-modifying agent in WO92/02580 is to impart micro-perforations to the controlled permeability film, and as such, Gozukara teaches away from the present invention [which does not induce lensing or micro-perforation formation in the elastomeric film both during formation and use of the film.]

Applicant is respectfully apprised that Gozukara teaches that perforated films have the disadvantage of not acting as a barrier to micro-organisms and/or moisture (column 1, lines 45-48), thus teaching away from the formation of any kind of perforations, including micro-perforations and lensing, in the film. '580 teaches that the surface modifying agent is used to modify the surface behavior of the porous filler and may also reduce the adhesion of the film forming polymer to the porous filler, which may ultimately, impart micro-perforations to the film. However, as noted by Applicant in Applicant's arguments, Gozukara's particles are non-porous, while the particles in '580 (WO92/02580) are porous. Thus, there is no need to use the surface-modifying agent, and hence there are no micro-perforations imparted as a result of the use of the surface-modifying agent. Therefore, Gozukara does not teach away from the present

invention, which does not induce lensing or micro-perforation formation in the elastomeric film both during formation and use of the film.

Any inquiry concerning this communication should be directed to Sow-Fun Hon whose telephone number (571)272-1492. The examiner can normally be reached Monday to Friday from 10:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (571)272-1498. The fax phone number for the organization where this application or proceeding is assigned is (571)273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S. Hon

Sow-Fun Hon

11/09/05